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in a considerable degree, to the exercise of a wise judicial discretion by the trial court, whose judgment will not be disturbed unless plainly erroneous.

4. *QUO WARRANTO*—*Proceeding under Code, ch. 145—Title to office.* The object of chapter 145 of the Code was to simplify the procedure in *quo warranto* cases, and to define the cases in which the writ might be used, and not to narrow the writ or make it less comprehensive in trying the title to an office that it was common law, where title to an office could be tested if the incumbent were not in possession *de jure*, although he might be a full *de facto* officer. The provisions of that chapter are not restricted to cases in which the incumbent is a mere intruder or usurper without color or pretence of title.

5. *APPEAL AND ERROR*—*Petition for quo warranto.* A writ of error lies from this court to a judgment of a circuit refusing to entertain a petition for writ of *quo warranto* tendered by a *bona fide* claimant of an office to test the title thereto.

6. *CLERKS—County and circuit courts—Effect of new census.* Whether there shall be elected at a general election a separate clerk for the circuit court of a county is determined by the last general census taken before the election. If such census shows a population of less than fifteen thousand inhabitants, the clerk of the county court is *ex officio* clerk of the circuit court for a full term of six years, regardless of what may be shown by a census taken during his term. If he die during his term, but after a new census showing more than fifteen thousand inhabitants, his successor holds, as he would have held, the office of clerk of both courts for the residue of his term.

7. *CONSTITUTIONAL LAW—Clerks.* Art. VII, sec. 1, of the Constitution, with reference to the election of clerks, is not self-executing, and to give it effect legislation was necessary.

SIMONS V. MILITARY BOARD OF VIRGINIA.—Decided at Wytheville, June 20, 1901.—*Harrison, J.*

1. *MANDAMUS—Discretion—Military Board—Court martial—Pay roll.* Mandamus will not lie to compel the "Military Board" to pay a court martial pay roll, as it is a matter within the discretion of said board under the provisions of section 377 of the Code, and mandamus does not lie to control the conduct of a functionary who is invested with any discretion in the premises.

STONE V. CALDWELL, CLERK.—Decided at Wytheville, June 20, 1901.—*Whittle, J.*

1. *DELINQUENT LANDS—Purchase from Commonwealth—Fees of officers.* The fees prescribed by section 666 of the Code, as amended (Acts 1899-1900, p. 855), are intended to compensate the officers for the services therein enumerated, but other incidental duties are imposed upon the clerks, the compensation for which is not specifically provided, and for which they are entitled to demand the fees allowed by chapter 172 of the Code. If these are not paid or secured, the clerk may refuse to receive and file an application to purchase from the Commonwealth.

2. *DELINQUENT LANDS—Offer to purchase—Clerk's fees.* On an application to purchase delinquent lands from the Commonwealth, the clerk is not entitled to charge for but one statement and one calculation of interest for the entire time the land was delinquent, although it may have been delinquent for a number of years.